(24,855)
(24,856)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 572.

UTAH POWER & LIGHT COMPANY, APPELLANT,

vs.

THE UNITED STATES.

No. 573.

THE UNITED STATES, APPELLANT,

vs.

UTAH POWER & LIGHT COMPANY.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF UTAH.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 1, 1915.

1 UNITED STATES OF AMERICA,
District of Utah, ss:

At a Stated Term of the United States District Court for the District of Utah, Begun and Held in the City of Salt Lake, in said District, on the Second Monday, To-wit, the 12th Day of April, 1915, and of the Independence of the United States of America the 129th.

Present: Honorable John A. Marshall, United States District Judge, for the District of Utah.

On the 5th day of June, 1912, the plaintiff filed its complaint in the following cause, which is in words and figures, to-wit:

In the District Court of the United States in and for the District of Utah, Central Division.

In Equity. No. 390.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
UTAH POWER & LIGHT COMPANY, a Corporation, Substituted for The Telluride Power Company, a Corporation, Defendant.

To the Judge of the United States District Court within and for the District of Utah:

The United States of America, by the Attorney-General brings this bill of complaint against the Telluride Power Company, a corporation, and thereupon avers and alleges as follows, to-wit:

I.

The defendant is a corporation organized and existing under the laws of the State of Colorado for the lucrative purpose of supplying electrical energy to all who may desire to obtain it for
2 any of the many and varied uses of which such energy is susceptible, and who are able and willing to pay to the defendant such pecuniary charges as it may choose to exact in return; that the said defendant has its principal office and place of business at the City of Provo, in the State of Utah.

II.

That for a number of years past, to-wit; since on or about the first day of December, 1906, the defendant has been engaged, and is now engaged in the continuous operation of certain hydro-electric power works, situated near the town of Pleasant Grove, Utah County, State of Utah, and upon the sections of land hereinafter more particularly described.

The chief and essential elements composing said works are pipe lines or conduits, a reservoir, a telephone line, a tramway, a transmission line, and certain buildings, all of which is hereinafter more specifically described; that said power works are equipped with various water-motors, electric generators, and other machinery and apparatus whereby the kinetic energy acquired by the water in its descent, through said conduits or pipe lines, may be transmuted for the electrical energy. That said pipe lines or conduits, telephone line, tramway, transmission line, reservoir, and certain buildings belonging to said defendant company, hereinafter more particularly described, are situated wholly upon and within the land of the plantiff, which land, together with much other land of the plaintiff was set apart and reserved on July 1st, 1910, when, by virtue of a Proclamation by the President, the said land became and it has ever since remained, and is now a part of the Wasatch National Forest. The proclamation was made and issued
3 on the day last aforesaid, and a copy thereof appears in Part 2, of Volume 36 of the United States Statutes at Large, at page 2721. The said conduits, or wood-stave pipe, is about 28 inches in diameter, and about 10,445 feet in length. This conduit is situated in the northwest quarter (¼) of the northwest quarter (¼) of Section twenty-three (23), and the south half (½) of the south half (½) of Section fourteen (14), and the south-west quarter (¼) of the south-west quarter (¼) of Section thirteen (13), and the north-west (¼) quarter of Section twenty-four (24), all in Township Five (5) South, Range Two (2) East, Salt Lake Meridian; also a conduit or iron pipe line as follows, to-wit: 750 feet of which is six inches in diameter; 620 feet of which is eight inches in diameter, and 4502 feet of which is ten inches in diameter, the same being a total length of about 5,872 feet and being located in the west half (½) of Section fourteen (14), and the south-east quarter (¼) of the south-west quarter (¼) of Section eleven (11), all in Township Five (5) South, Range Two (2) East, Salt Lake Meridian; said reservoir is about 113 by 259 feet with a capacity of about 328,650 cubic feet, or 7.55 acre feet; said reservoir is located in the north-west quarter (¼) of the north-west quarter (¼) of Section twenty-three (23), Township Five (5) South, Range two (2) East, Salt Lake Meridian; also a two-room one-story frame house with outside measurements of 14.4 feet by 22.4 feet; also a frame woodshed six by eight feet; also two frame tents approximately 16 by 20 feet; said buildings and tents are all situate in the north-west quarter (¼) of the northwest quarter (¼) of Section twenty-three (23), Township Five (5) South, Range Two (2) East, Salt Lake Meridian; also a steel pressure pipe 24 inches in diameter and 4,956 feet in length 4,047 feet of which is on the said Wasatch
4 National Forest and is located in the west half (½) of the north-west quarter (¼) of Section twenty-three (23), and the south-east quarter (¼) of the north-east quarter (¼) and the north-east quarter (¼) of the South-east quarter (¼) of Section twenty-two (22), all in Township five (5) South, Range two (2) East, Salt Lake Meridian; also a tramway 3,300 feet in length, of

which 2,350 feet are on the Wasatch National Forest and located in the south-west quarter (¼) of the north-west quarter (¼) of Section twenty-three (23) and the South-east quarter (¼) of Section twenty-two (22), Township Five (5) South, Range Two (2) East, Salt Lake Meridian; also a telephone and transmission line consisting of one sets of poles and one pair of wires for the telephone line, and one pair of wires for transmission line; these wires are connected to the frame building above described and to the power house of the defendant company and traverses the north-west quarter (¼) of Section twenty-three (23), and the south-east quarter (¼) of Section Twenty-two (22), Township five (5) South, Range two (2) East, Salt Lake Meridian; all of which are situate in the County of Utah, State of Utah.

III.

Plaintiff avers that no permission for the construction or operation of the said conduits, reservoir, frame house, wood-shed, tents, steel pressure pipe, tramway, or telephone line or transmission line, or any of the same, as hereinbefore described, was ever granted or given to the defendant company; and no permit or authority to occupy or use said lands for said purposes was ever applied for or given by the Secretary of the Interior, or other officer of the United States, prior to the inclusion of the said lands in the said Wasatch National Forest; and no permit or other authority to occupy or use said lands for said purposes has been applied for or obtained by said defendant company from the Secretary of Agriculture, or other officer of the National Forest Service, since said lands have become a part of said Wasatch National Forest.

IV.

The defendant has been accorded the fullest opportunity to comply with the Act of Congress relative to said Wasatch National Forest, and the Regulations of the Secretary of Agriculture duly adopted in pursuance thereof, and thereby to obtain from the plaintiff permission to maintain and operate the said hydro-electric works upon and within the said Wasatch National Forest, but has willfully failed and refused to apply for or obtain such permission, and has continued and now continues from day to day and from month to month to hold the exclusive possession of the said conduits, or pipe lines, reservoir, frame house, wood-shed, tents, steel pressure pipe line, tramway, and telephone and transmission lines, as hereinbefore described, and to operate, use and enjoy the same in open defiance of the rights of the plaintiff in the premises, and without compliance or color of compliance with the laws enacted by Congress to govern the enjoyment of special privileges in the use and occupation of the lands within the confines of the National Forests. The said operation produces, and has continuously produced ever since the commencement thereof, as aforesaid, powerful and copious currents of electricity which the defendant has caused, and is causing to be conveyed through appropriate transmission

lines and to various localities within the State of Utah. The defendant has been disposing, and is disposing, of such electricity for money consideration to divers persons, firms, private corporations, and municipalities who have been and are using the same for various domestic, industrial, and other purposes, including the lighting of houses and streets, and the propulsion of ma-
6 chinery and for operating machinery for mining and other purposes; that plaintiff has not and cannot obtain full information as to the uses of said electrical energy otherwise than by a full discovery to be exacted of said defendant, but avers that most of the electrical energy produced by said defendant by means of said hydro-electric works has been and is being delivered by the defendant in return for large pecuniary considerations.

The plaintiff is not definitely informed of the power capacity of said works, or the measure of the power which has actually been developed in the operations thereof, and it cannot obtain such information otherwise than by a full discovery to be exacted of the defendant in this cause; plaintiff avers however, that the power capacity of said works and the net electrical horse-power already produced by the operation thereof by the defendant, are very large, but that no charge for compensation for, or on account of said operation for the exclusive and beneficial possession of said public reserve lands which the defendant has already enjoyed has ever been paid by or on behalf of the defendant, or received by the plaintiff.

V.

The defendant, unless restrained by this Honorable Court, will continue to operate the said works, in manner as it has so heretofore done, and therein to hold and enjoy the possession and use of the said public reserve lands whereon the said described works are situated, without compensation to the plaintiff, without its permission and in open violation of its laws, and to the absolute exclusion of all of plaintiff's citizens who may desire to use, in
7 whole or in part, the same lands for similar or other purposes with the plaintiff's permission, and pursuant to a full compliance with its laws and regulations touching such uses.

The plaintiff alleges and submits to the Court that the defendant's exclusive appropriation of said land is a purpresture and a continuing trespass, and that the persistent operation of said works, without the permission and against the rights of the plaintiff, constitutes a public nuisance which, if not promptly put down by the injunctive power of the Court, will inevitably induce many persons to commit similar violations of the law and thus seriously embarrass the plaintiff in its endeavor to effectuate its settled policies touching the use and enjoyment of the National Forests, and lead to a multitude of suits.

In consideration whereof, and for as much as the plaintiff is without full and adequate remedy in the premises save in a Court of Equity, and to the end that said defendant, the Telluride Power Company, may make full, true and direct answer to all and singular the matters and things hereinbefore set out, as fully as if it had

been particularly interrogated thereunto, but not under oath,—an answer under oath being hereby expressly waived; and to the end that the said defendant, during the progress of this cause, may finally and perpetually be enjoined from further operating the said works, without the permission of the plaintiff, and from further maintaining, in whole or in part, its said unlawful and tortious possession and occupancy within said Wasatch National Forest without the permission of plaintiff and without first complying with the laws of the United States and the Rules and Regulations promulgated by the Secretary of Agriculture relating to National Forests; and to the end that the reasonable value of the enjoyment of said pipe lines, conduits, telephone and transmission lines, tramway, reservoir, and the buildings heretofore described, on the reserved lands aforesaid; to be gauged by the duration of such enjoyment, the net power capacity of the said works, and the scale of charges adopted in the existing regulations of the Secretary of Agriculture governing similar cases, may be duly ascertained, and that the defendant may be compelled to account and make corresponding pecuniary payment therefor to the plaintiff; and that the plaintiff may have such other and *futhrer* relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

8

May it please Your Honor to grant unto the plaintiff a writ of subpœna, to be directed to the said the Telluride Power Company, thereby commanding it at a certain time and under a certain penalty therein to be limited, to appear before this Honorable Court and then and there full, true and direct answer make to all and singular the premises, and to stand to, perform and abide by such order, direction and decree as may be made against it in the premises, as shall seem meet and agreeable to equity.

GEO. W. WICKERSHAM,
Attorney General of the United States;
HIRAM E. BOOTH,
United States Attorney for the District of Utah,
Solicitors for Plaintiff.

Filed June 5th, 1912. Jerrold R. Letcher, Clerk.

9

And afterwards and on the 30th day of January, 1913, the plaintiff herein filed its Supplemental Bill of Complaint, which being entitled in said court and cause, is in words and figures following, to-wit:—

Supplemental Bill of Complaint.

To the Judge of the United States District Court within and for the District of Utah:

Comes now the United States of America by the Attorney General and brings this supplemental bill in the above entitled suit, and complains and alleges as follows, to-wit:—

That since the filing of the original bill in said suit, which was filed herein on or about June 5, 1912, the said defendant, the Telluride Power Company, a corporation, has sold, assigned, transferred and conveyed all of its right, title and interest in and to all of its property, real and personal, and in and to all of its rights of whatsoever kind and nature, and to all of the property and rights, described in the original bill of complaint, to the Utah Power & Light Company, a corporation organized and existing under the laws of the State of Maine, but having an office and its principal place of business at Salt Lake City, Utah, within the State and District of Utah; that the said Telluride Power Company has sold all of its said property, and all of its rights, to the said Utah Power & Light Company under the express terms, conditions and agreement that the said Utah Power & Light Company should and would assume and answer for all and singular the suits pending against the Telluride Power Company wherein the United States of America is plaintiff, and should and would assume all liabilities to the plaintiff which shall have been incurred by the Telluride Power Company at any time whatsoever and of whatsoever nature or character, and wheresoever arising, whether the same shall have been asserted in Court or not; and with the further agreement and understanding that the said Utah Power & Light Company would consent upon the record to be substituted for the said Telluride Power Company in all pending suits, and liable to this plaintiff as fully as the said Telluride Power Company would have been if there had been no such sale and no such substitution had occurred.

That the said Utah Power & Light Company has become the purchaser of all of the property of whatsoever kind and nature, and of all the rights and of all franchises of the said Telluride Power Company within the State of Utah, and has assumed all of the liabilities of the said Telluride Power Company, and has now taken possession of all of the Hydro-electric power works in the said bill of complaint described, and is now operating the same in the same manner as the said Telluride Power Company heretofore operated the said hydro-electric power works, and has refused, and still refuses to comply with the rules and regulations of the said plaintiff in all respects as heretofore alleged against the said Telluride Power Company; and the said Utah Power & Light Company is now operating, and will continue to operate the said hydro-electric power works in and upon the land of the plaintiff without compensation to the plaintiff and without the plaintiff's permission, and in open violation of its laws and in all respects as heretofore alleged in the said original bill of complaint against the said Telluride Power Company.

That the said Utah Power & Light Company has entered its appearance in the above entitled suit and has consented to be substituted as defendant in place of the defendant, The Telluride Power Company, and to be in all respects responsible and liable to the plaintiff as if this suit had been continued against the said Telluride Power Company.

11 That since the sale of all of its property by the said Telluride Power Company in the State of Utah to the Utah Power & Light Company, the said Telluride Power Company has dissolved its corporate existence and is no longer a legal entity, and the Utah Power & Light Company has succeeded to all of its rights and has assumed all of its liabilities.

That all of the allegations in the original bill of complaint in the above entitled suit are hereby referred to and by reference are made a part of this Supplemental Bill substituting the Utah Power & Light Company as defendant for The Telluride Power Company, the defendant named in the original Bill of Complaint.

In consideration whereof this plaintiff prays that an order be made substituting the Utah Power & Light Company as defendant in the above entitled suit for the said Telluride Power Company, and when so substituted that this plaintiff have judgment and decree against the Utah Power & Light Company as originally prayed for in the said original Bill of Complaint against the said Telluride Power Company.

GEO. W. WICKERSHAM,
Attorney General of the United States;
HIRAM E. BOOTH,
United States Attorney for the District of Utah,
Solicitors for Plaintiff.

It is hereby stipulated and agreed that the foregoing Supplemental Bill may be filed and that an Order may be made by the Court substituting the Utah Power & Light Company as defendant in the above entitled suit in place of the said Telluride Power Company, in accordance with the said Supplemental Bill.

12 S. A. BAILEY,
WALDEMAR VAN COTT ET AL.,
F. J. GUSTIN ET AL.,
Attorneys for the Utah Power & Light Company.

Filed January 30, 1913. Jerrold R. Letcher, Clerk.

13 That afterwards and on the 3rd day of February, 1913, an order of substitution of party defendant was made herein, which, being entitled in said Court and cause, is in words and figures following, to-wit:—

Order of Substitution of Party Defendant.

At this day come the parties hereto, H. E. Booth appearing for complainant, and Waldemar Van Cott and F. J. Gustin for defendant, and thereupon, by consent, plaintiff files supplemental bill substituting the Utah Power and Light Company as party defendant herein in place of the Telluride Power Company. Thereupon the cause came on to be heard upon the motion of the said defendant, Utah Power and Light Company to dismiss the bill, and certain parts

thereof, contained in paragraphs III, IV, and V,—and the same was argued and submitted and by the Court taken under advisement.

Dated February 3, 1913.

14 And afterwards and on the 3rd day of February, 1913, the defendant herein filed its motion to dismiss bill in equity and specified parts thereof, which, being entitled in said court and cause is in words and figures following, to-wit:—

Motion to Dismiss Bill in Equity.

Comes now the said defendant and separately moves to dismiss from the alleged bill in equity, for insufficiency of fact to constitute a valid cause of action in equity, each of the following, to-wit:—

1. The entire alleged bill in equity.

2. All of paragraph III. of said bill, to-wit:—

"Plaintiff avers that no permission for the construction or operation of said conduits, reservoir, frame house, wood shed, tents, steel pressure pipe, tramway or telephone line or transmission line or any of the same, as hereinbefore described, was ever granted or given to the defendant company; and no permit or authority to occupy or use said lands for said purposes was ever applied for or given by the Secretary of the Interior, or other officer of the United States, prior to the inclusion of the said lands in the said Wasatch National Forest; and no permit or other authority to occupy or use said lands for said purposes has been applied for or obtained by said defendant company from the Secretary of Agriculture, or other officer of the National Forest Service, since said lands have become a part of said Wasatch National Forest."

And the defendant separately moves to dismiss from said bill each of the following from said paragraph III, to-wit:—

15 (*a*) conduits;
(*b*) reservoir;
(*c*) frame house;
(*d*) wood shed;
(*e*) tents;
(*f*) steel pressure pipe;
(*g*) tramway;
(*h*) telephone line;
(*i*) transmission line.
(*j*) "* * * and no permit or authority to occupy or use said lands for said purposes was ever applied for or given by the Secretary of the Interior, or other officer of the United States, prior to the inclusion of the said lands in the said Wasatch National Forest;"
(*k*) "* * * and no permit or other authority to occupy or use said lands for said purposes has been applied for or obtained by said defendant company from the Secretary of Agriculture, or other officer of the National Forest Service, since said lands have become a part of said Wasatch National Forest."

3. All of paragraph IV. of said bill, to-wit:

"The defendant has been accorded the fullest opportunity to com-

ply with the Act of Congress relative to said Wasatch National Forest and the Regulations of the Secretary of Agriculture duly adopted in pursuance thereof and thereby to obtain from the plaintiff permission to maintain and operate the said hydro-electric works upon and within the said Wasatch National Forest, but has willfully failed and refused to apply for or obtain such permission and has con-
16 tinued and now continues from day to day and from month to month to hold the exclusive possession of the said conduits, or pipe lines, reservoir, frame house, wood shed, tents, steel pressure pipe line, tramway and telephone and transmission lines as hereinbefore described and to operate, use, and enjoy the same in open defiance of the rights of the plaintiff in the premises and without compliance or color of compliance with the laws enacted by Congress to govern the enjoyment of special privileges in the use and occupation of the lands within the confines of the National Forests. The said operation produces and has continuously produced ever since the commencement thereof, as aforesaid, powerful and copious currents of electricity which the defendant has caused and is causing to be conveyed through appropriate transmission lines and to various localities within the State of Utah. The defendant has been disposing and is disposing of such electricity for money considerations to divers persons, firms, private corporations and municipalities who have been and are using the same for various domestic, industrial and other purposes, including the lighting of houses and streets and the propulsion of machinery and for operating machinery for mining and other purposes; that plaintiff has not and cannot obtain full information as to the uses of said electrical energy otherwise than by a full discovery to be exacted of said defendant, but avers that most of the electrical energy produced by said defendant by
17 means of said hydro-electric works has been and is being delivered by the defendant in return for large pecuniary considerations.

"The plaintiff is not definitely informed of the power capacity of said works or the measure of the power which has actually been developed in the operation thereof, and it cannot obtain such information otherwise than by a full discovery to be exacted of the defendant in this cause; plaintiff avers however, that the power capacity of said works and the net electrical horse power already produced by the operation thereof by the defendant are very large, but that no charge for compensation for, or on account of said operation for the exclusive and beneficial possession of said public reserve lands which the defendant has already enjoyed has ever been paid by or on behalf of the defendant or received by the plaintiff."

And the defendant separately moves to dismiss from said bill each of the following from said paragraph IV., to wit:

(*a*) conduits;
(*b*) reservoir;
(*c*) frame house;
(*d*) wood shed;
(*e*) tents;
(*f*) steel pressure pipe line;
(*g*) tramway;

(*h*) telephone lines;

(*i*) transmission lines;

18 (*j*) "The defendant has been accorded the fullest opportunity to comply with the Act of Congress relative to said Wasatch National Forest and the Regulations of the Secretary of Agriculture duly adopted in pursuance thereof and thereby to obtain from the plaintiff permission to maintain and operate the said hydro-electric works upon and within the said Wasatch National Forest; but has willfully failed and refused to apply for or obtain such permission and has continued and now continues from day to day and from month to month to hold the exclusive possession of the said conduits, or pipe lines, reservoir, frame house, wood shed, tents, steel pressure pipe line, tramway and telephone and transmission lines as hereinbefore described and to operate, use, and enjoy the same in open defiance of the rights of the plaintiff in the premises and without compliance or color of compliance with the laws enacted by Congress to govern the enjoyment of special privileges in the use and occupation of the lands within the confines of the National Forests."

(*k*) "* * * The said operation produces and has continuously produced ever since the commencement thereof, as aforesaid, powerful and copious currents of electricity which the defendant has caused and is causing to be conveyed through appropriate transmission lines and to various localities within the State of Utah."

19 (*l*) "* * * The defendant has been disposing and is disposing of such electricity for money consideration to divers persons, firms, private corporations and municipalities who have been and are using the same for various domestic, industrial and other purposes, including the lighting of houses and streets and the propulsion of machinery and for operating machinery for mining and other purposes;"

(*m*) "* * * That plaintiff has not and cannot obtain full information as to the uses of said electrical energy otherwise than by a full discovery to be exacted of said defendant, but avers that most of the electrical energy produced by said defendant by means of said hydro-electric works has been and is being delivered by the defendant in return for large pecuniary considerations."

(*n*) "The plaintiff is not definitely informed of the power capacity of said works or the measure of the power which has actually been developed in the operation thereof, and it cannot obtain such information otherwise than by a full discovery to be exacted of the defendant in this cause; plaintiff avers however, that the power capacity of said works and the net electrical horse power already produced by the operation thereof by the defendant are very large, but that no charge for compensation for or on account of said

20 operation for the exclusive and beneficial possession of said public reserve lands which the defendant has already enjoyed has ever been paid by or on behalf of the defendant or received by the plaintiff."

4. All of paragraph V. of said bill, to-wit:

"The defendant, unless restrained by this Honorable Court, will continue to operate the said works, in manner as it has so heretofore done, and therein to hold and enjoy the possession and use of the said public reserve lands whereon the said described works are situated without compensation to the plaintiff, without its permission and in open violation of its laws and to the absolute exclusion of all of plaintiff's citizens who may desire to use, in whole or in part, the same lands for similar or other purposes with the plaintiff's permission and pursuant to a full compliance with its laws and regulations touching such uses."

"The plaintiff alleges and submits to the Court that the defendant's exclusive appropriation of said land is a purpresture and continuing trespass and that the persistent operation of said works, without the permission and against the rights of the plaintiff, constitutes a public nuisance which if not promptly put down by the injunctive power of the court, will inevitably induce many persons to commit similar violations of the law and thus seriously embarrass the plaintiff in its endeavor to effectuate its settled policies touching the
21 use and enjoyment of the National Forests and lead to a multitude of suits."

And the defendant separately moves to dismiss from said bill each of the following from said paragraph V, to-wit:—

(*a*) "The defendant, unless restrained by this Honorable Court, will continue to operate the said works, in manner as it has so heretofore done, and therein to hold and enjoy the possession and use of the said public reserve lands whereon the said described works are situated without compensation to the plaintiff, without its permission and in open violation of its laws and to the absolute exclusion of all of plaintiff's citizens who may desire to use, in whole or in part, the same lands for similar or other purposes with the plaintiff's permission and pursuant to a full compliance with its laws and regulations touching such uses."

(*b*) The plaintiff alleges and submits to the Court that the defendant's exclusive appropriation of said land is a purpresture and continuing trespass and that the persistent operation of said works, without the permission and against the rights of the plaintiff, constitutes a public nuisance which if not promptly put down by the injunction power of the court."

(*c*) "* * * will inevitably induce many persons to commit similar violations of the law and thus seriously embarrass the plaintiff in its endeavor to effectuate its settled policies touching the use and enjoyment of the National Forests and lead to a multi-
22 tude of suits."

(*d*) purpresture;

(*e*) continuing trespass;

(*f*) public nuisance.

Wherefore, it is prayed that each of said motions to dismiss may be sustained.

S. A. BAILEY,
WALDEMAR VAN COTT,
E. M. ALLISON, JR.,
W. D. RITER,
F. J. GUSTIN,
C. A. GILLETTE,
D. F. BRAYTON,
Solicitors for Defendant.

Copy hereof received as of this February 3, 1913, and it is hereby stipulated that the above motion may be filed and considered in lieu of the demurrer heretofore filed herein.
Dated February 3, 1913.

HIRAM E. BOOTH,
Attorney for Plaintiff.

Filed February 3, 1913. Jerrold R. Letcher, Clerk.

23 And afterwards and on the 31st day of March, 1913, an order denying in part motion to dismiss bill, was duly entered, which being entitled in said court and cause is in words and figures following, to-wit:

Order Denying in Part Motion to Dismiss Bill.

This cause having been heretofore submitted on defendant's motion to dismiss the whole and specify the parts of the complaint, and by the Court taken under advisement, Now, after due consideration it is Ordered that said motion be sustained as to "conduits," "reservoir" and "steel pressure pipe" in paragraph 3 of the bill, and also with respect to those parts of paragraph 4 specified in the motion as (*a*), (*b*), (*f*), (*k*), (*l*), (*m*) and (*n*) in relation to that paragraph; and that said motion be otherwise denied.

J. A. MARSHALL, *Judge.*

Dated, March 31, 1913.

24 And afterwards and on the same day, the Court rendered its opinion on said motion, which, being entitled in said court and cause, is in words and figures following, to-wit:—

Opinion.

Motion to Dismiss the Whole and Specify the Parts of the Complaint.

MARSHALL, *J.:*

It is first objected that the plaintiff has an adequate remedy at law, and, hence, no right in equity. The plaintiff alleges an exclusive possession in defendant—not simply an exercise of an easement.

A claim of right is not negatived. An action in ejectment would seem to furnish adequate relief. But it is not necessary to determine this question. Under Equity Rule 22, the objection, if well taken, is only ground for the transfer of the suit to the law side of the court; and does not justify a dismissal.

Passing to the merits, the important issue is whether under Section 9 of the Act of July 26, 1866, carried into the Revised Statutes as Sec. 2339, the defendant had a title to a right of way for a pipe line for conducting water for power purposes. If so, the incorporation of the land into a forest reserve after defendant's right attached does not defeat it. It is claimed for the plaintiff that such right does not exist for these reasons: (1) That as to electric power purposes Section 9 was repealed by the Act of May 14, 1896, amending the Act of March 3, 1891, and by the Act of February 15, 1901, which acts were prior to the initiation of the defendant's rights. (2) That Section 9 never granted rights of way for canals and ditches for the generation of electrical power, as such a use was not known at the time of the passage of that Act.

25 Considering these objections briefly, it may be observed that Section 9 has never been expressly repealed. If repealed at all it is by implication. Does the subsequent legislation show an intent to repeal it? The subsequent statutes substitute for the grant of Section 9 not involving any record title a revocable license based on a record; for a grant of a right of way for a ditch or canal a license to use such ditch together with twenty-five feet on each side of the same and other necessary ground not exceeding forty acres; by the Act of February 15, 1901, the right to use adjacent ground was extended to fifty feet on each side of the ditch and was expressly declared to be revocable. Do these subsequent statutes furnish additional or cumulative rights or were they intended to entirely displace Section 9. Some light is thrown on this question by the Act of March 3, 1891, granting rights of way for canals, ditches and reservoir purposes for irrigation, subject to the filing of plats with the Secretary of the Interior and his approval thereof, and to a provision for forfeiture if the ditch or canal be not completed within five years. Was Section 9 repealed by this Act with respect to water rights for irrigation? This statute grants some rights additional to those granted by Section 9, and is subject to burdensome conditions,—to the small irrigator conditions so burdensome as in some cases to preclude the exercise of the right. If there was any class the Government might be presumed to specially favor, it was the irrigator of land, and yet, if this was a repeal, he was singled out to be discriminated against. So that at an early date the Land Department of the Government held that this statute was cumulative and did not repeal Section 9 as to ditches for irrigation.

26 Re Cache Valley Co., 16 Land Dec. 192, 196;
Silver Lake Etc. Co. vs. City of Los Angeles, 37 Ld. Dec. 152;
Re McMillan Reservoir Site, 37 Land Dec. 6;
Lincoln etc. Townsite Co. v. Sandy; 32 Land Dec. 463;

And so the courts generally decided.

Cottonwood v. Thom. 39 Mont. 115;
Rasmussen v. Blust, 85 Neb. 198 (133 Am. St. 650);
United States v. Lee; 110 Pacific 607;
United States v. Conrad Invest. Co., 156 Fed. 123.

In enacting subsequent statutes respecting power plants Congress must be considered to have taken note of these holdings. Again, it did not expressly repeal Section 9: again, it granted additional rights subject to specified conditions. These statutes are in pari materia; they are to be construed together, and presumptively evidence the same intent. The weight of authority is that Section 9 has not been repealed.

Does Section 9 grant rights of way for ditches and canals for the generation of electric power? It recognizes rights to the use of water for mining, agricultural, manufacturing or other purposes whenever they have accrued under local customs, laws and decisions of courts and grants a right of way for the construction of ditches and canals for these purposes. This was in the nature of a continuing offer and embraced water rights for any beneficial purpose. Its object was to promote the development of the resources of the country; and this object would be defeated by holding that it should be so strictly construed as to eliminate every purpose for which water was not then used. As stated in Wiel on Water Rights, the rulings of half a century are opposed to it. That the generation of electricity is a beneficial use for which an appropriation
27 of water may be made has long been settled.

Speer v. Stephenson, 102 Pacific 365;
Sternberger v. Seaton, 102 Pacific 168;
Thompson v. Pennebaker, 173 Fed. 849;
Cascade Co. v. Empire Co., 181 Fed. 1011.

I am satisfied that the defendant has a title to a right of way for its pipe lines and reservoir under Section 9 of the Act of July 26, 1866, and was under no obligation to proceed under the subsequent legislation. But having elected to stand on the grant of Section 9 and the amendment thereto including reservoirs, it cannot claim any additional right under this subsequent legislation. In the complaint it was alleged that the defendant has acquired no such additional right. It is evident then that in certain respects the plaintiff is entitled to relief.

The motion will be sustained as to "conduits," "reservoir" and "steel pressure pipe" in paragraph 3 of the bill; and also with respect to those parts of paragraph 4 specified in the motion as (*a*), (*b*), (*f*), (*k*), (*l*), (*m*) and (*n*) in relation to that paragraph; and will be otherwise denied.

Dated at Salt Lake City, Utah, this 31st day of March, 1913.

Filed March 31, 1913. Jerrold R. Letcher, Clerk.

28 And thereafter and on the 10th day of April, 1914, the plaintiff made a motion for leave to amend bill by reinstating part of allegations stricken from bill by order of March 31, 1913, and Order granting same, which, being entitled in said court and cause are in words and figures following, to-wit:—

Motion for Leave to Amend Bill and Order Granting Same.

Comes now the plaintiff herein and moves this Honorable Court for leave to amend its Bill in Equity, now on file herein, by reinstating therein, and for an order of this Court permitting it to reinstate — its said Bill in Equity the following portions of said bill stricken therefrom by the order of this Court, entered herein on March 31, A. D. 1913, to-wit: "Conduits, Reservoirs and Steel Pressure Pipe" in paragraph three of said Bill; also those parts of paragraph four of said Bill, specified in plaintiff's motion to strike herein filed on the 3rd day of February, A. D. 1913, as (*a, b* and *f*), and stricken from said Bill by the order of this Court made and entered herein on March 31, 1913; and for such other or further order or relief as to the Court may seem just.

WILLIAM W. RAY,
United States Attorney, Attorney for Plaintiff.

Service accepted of a copy of the above motion this 10th day of April, A. D. 1914.

VAN COTT, ALLISON & RITER,
Attorneys for Defendant.

Filed April 10, 1914. Jerrold R. Letcher, Clerk.

29 At this day this cause came on to be heard on the motion of plaintiff for leave to amend its Bill in equity and for an order permitting it to reinstate certain portions which had been stricken from said bill—W. W. Ray, United States District Attorney, appearing for said complainant and E. M. Allison appearing for said defendant—thereupon, after due consideration by the Court, it is Ordered that said motion be sustained, and defendant is given to May 13, 1914, to file its answer herein.

Made and entered April 20, 1914.

30 And afterwards and on the 4th day of January, 1915, the defendant herein filed its Amended Answer, which being entitled in said court and cause is in words and figures following, to-wit:—

Amended Answer.

31 Comes now the defendant and answers the original bill of complaint and supplemental bill of complaint of the above named plaintiff.

I.

The defendant admits that the Telluride Power Company was a corporation organized and existing under the laws of the State of Colorado for the purpose of supplying electrical energy to all who might desire to obtain it for any of the many and varied uses of which such energy is susceptible, and who were able and willing to pay fair and reasonable charges therefor, and that the Telluride Power Company had its principal office and place of business in the City of Provo, in the State of Utah; but denies that the defendant or the Telluride Power Company, or any of its predecessors, have exacted or demanded unfair or unreasonable charges for electric energy, and denies all the allegations contained in subdivision I of the original bill of complaint, except as hereinbefore admitted or denied.

32 II.

The defendant denies that the power house or any part of the transmission line, referred to in subdivision II of the original bill of complaint, are or have at any time been upon or within land of the plaintiff; and further denies that any of the water motors, electric generators or other machinery or apparatus referred to in said subdivision II are or at any time have been upon or within land of the plaintiffs; and alleges that the said power house, water motors, electric generators and other machinery and apparatus, whereby the kinetic energy acquired by the water has been transmitted into electrical energy, are and have always been situated upon land of the defendant and its predecessors.

III.

The defendant admits that no formal permission for the construction or operation of the conduits, reservoir, flume, house, woodshed, tents, steel pressure pipe, tramway or telephone line referred to in the original bill of complaint, was ever granted or given to the Telluride Power Company or to the defendant by the Secretary of the Interior or the Secretary of Agriculture, and further admits that no permit or authority to occupy or use the land of the plaintiff mentioned in the original bill of complaint was ever applied for or given by the Secretary of the Interior or other officer of the United States, prior to the inclusion of said lands in the Wasatch National Forest, and that no permit or other authority to occupy or use said lands has been applied for or obtained by Telluride Power Company or the defendant from the Secretary of Agriculture or other officer of the National Forest Service since said lands have become a part of said Wasatch National Forest; but alleges that the construction and operation thereof were and are permitted and authorized by the
33 laws of the United States, without any formal permission or authority from the Secretary of the Interior or the Secretary of Agriculture, or any other officer of the United States.

The defendant denies all the allegations contained in subdivision III of the original bill of complaint, except as hereinbefore admitted, alleged or explained.

IV.

The defendant admits that the Telluride Power Company has had an opportunity to comply with the Acts of Congress relative to the Wasatch National Forest, and any and all regulations of the Secretary of Agriculture, and that it did not apply for or obtain any formal permission from the Secretary of Agriculture to maintain or operate the hydro-electric works referred to in the original bill of complaint, but alleges that the defendant and its predecessors have complied with all such Acts of Congress, and with all regulations of the Secretary of Agriculture, duly and lawfully adopted in pursuance thereof, with respect to the construction, use or operation of said hydro-electric works, and further alleges that neither the defendant nor its predecessors are or have been required by any Act of Congress or any lawful regulation of the Secretary of Agriculture to apply for or obtain any formal permission to maintain, use or operate said hydro-electric works.

The defendant admits that the Telluride Power Company has continued, and that it now continues from day to day and from month to month, to hold possession of the conduits, pipe lines, reservoir, flume, house, woodshed, tents, steel pressure pipe, tramway and telephone line, referred to in the original bill of complaint, and to operate and use and enjoy the same; but alleges that the defendant and its predecessors have had and still have the right to maintain,
34 use and operate the same under and by virtue of the laws of the United States and the local customs, laws and decisions of the courts of the State of Utah.

The defendant denies all the allegations contained in subdivision IV of the original bill of complaint, except as hereinbefore admitted or denied.

V.

The defendant admits that, unless restrained by this Honorable Court, it will continue to operate said works and to use the public reserve lands on which the same are situated without any formal permission from the Secretary of the Interior or the Secretary of Agriculture, to the exclusion of all of plaintiff's citizens who may desire to use, in whole or in part, the same lands for similar or other purposes; but denies all the other allegations contained in subdivision V of the original bill of complaint.

VI.

The defendant admits the allegations of the Supplemental Bill of Complaint, except that it denies that it has assumed any liabilities of the Telluride Power Company, except such liabilities as may be enforceable by the plaintiff.

VII.

As a defense to the original and supplemental bill of complaint the defendant alleges:

1. The Territory of Utah was created by an Act of Congress approved September 9, 1850, which provided, among other things, that the legislative power of said Territory should be vested in the
35 Governor and a legislative assembly, and should extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of said Act, but that no law should be passed interfering with the primary disposal of the soil; and further provided that all the laws passed by the legislative assembly and Governor should be submitted to the Congress of the United States, and that, if disapproved, they should be null and of no effect.

2. An Act of the Legislature of the Territory of Utah, approved by the Governor of said Territory February 20, 1880, contained the following:

"Sec. 6. A right to the use of water for any useful purpose, such as for domestic purposes, irrigating lands, propelling machinery, washing and sluicing ores, and other like purposes, is hereby recognized and acknowledged to have vested and accrued, as a primary right, to the extent of, and reasonable necessity for such use thereof, under any of the following circumstances: First—Whenever any person or persons shall have taken, diverted and used any of the unappropriated water of any natural stream, water course, lake, or spring, or other natural source of supply. Second—Whenever any person or persons shall have had the open, peaceable, uninterrupted and continuous use of water for a period of seven years."

"Sec. 7. A secondary right to the use of water for any of said purposes is hereby recognized and acknowledged to have vested and accrued (subject to the perfect and complete use of all primary rights) to the extent of and reasonable necessity for such use thereof, under any of the following circumstances: First—Whenever the whole of the waters of any natural stream, water-course, lake, spring, or other natural source of supply has been taken, diverted and used by prior appropriators for a part, or parts, of each year only; and other persons have subsequently appropriated any part, or the whole, of such water during any other part of such year, such person shall be deemed to have acquired a secondary right. Second—Whenever, at the time of an unusual increase of water exceeding seven years' average flow of such water, at the same season of each year, all the water of such average flow then being used by prior appropriators, and other
36 persons appropriate and use such increase of water, such persons shall be deemed to have acquired a secondary right."

"Sec. 12. Whenever the terms mentioned in this section are employed in this Act, they are employed in the sense hereinafter affixed to them, except where a different sense plainly appears: First—The term 'person' when applicable, includes 'firm,' 'partnership,' 'joint stock company,' 'association' and 'corporation.'"

"Sec. 15. All persons shall have the right of way across and upon public, private and corporate lands, or other right of way, for the construction and repair of all necessary reservoirs, dams, water-gates, canals, ditches, flumes, or other means of securing and conveying water for any necessary public use, or for drainage, upon payment of just compensation therefor, but such right of way shall in all cases be exercised in a manner not to unnecessarily impair the practical use of any other right of way, highway, or public or private road, nor to unnecessarily injure any public or private property."

3. The said Act of the Legislature of the Territory of Utah was duly submitted to the Congress of the United States, but was not disapproved, and the said Act remained and continued to be the law of said Territory.

4. The Territory of Utah became the State of Utah, and as such was admitted into the Union on an equal footing with the original states, on January 4, 1896, pursuant to an Act of Congress called "The Enabling Act," approved July 16, 1894, and a proclamation of the President of the United States issued January 4, 1896. The said Enabling Act provided, by Section 19, that all laws in force, made by said Territory at the time of its admission into the Union, should be in force in said State, except as modified or changed by said Act or by the Constitution of said State. The Constitution of the State of Utah, adopted November 5, 1895, provided, by Article XVII, that all existing rights to the use of any of the waters of the State
37 for any useful or beneficial purpose were thereby recognized and confirmed; and further provided, by Article XXIV, Sec. 2, that all laws of the Territory of Utah then in force, not repugnant to said Constitution, should remain in force until they expire by their own limitations, or were altered or repealed by the Legislature. The Act of the Legislature of the Territory of Utah, approved February 20, 1880, hereinabove mentioned, was not modified or changed by the Act of Congress approved July 16, 1894, and was not repugnant to the Constitution of the State of Utah or the Constitution of the United States, and accordingly became the law of said State.

5. An Act of the Legislature of the State of Utah, approved April 5, 1896, entitled "An Act to encourage the Irrigation of Land, the Mining, Milling, Smelting and other reduction of Ores, and the use and application of the Unappropriated Waters of National Streams and Water-courses to the Generation of Electrical Force and Energy, and to provide for the exercise of the Right of Eminent Domain therefor," contained the following:

"The cultivation and irrigation of the soil, the production and reduction of ores, are of vital necessity to the people of the State of Utah; are pursuits in which all are interested, and from which all derive benefit; and the use and application of the unappropriated waters of the natural streams and water-courses of the State to the Generation of electrical force and energy to be employed in industrial pursuits are of great public benefit and utility. So irrigation of land, the mining, milling, smelting or other reduction of ores, and such use and application of such waters for the generation of electrical power to be employed as aforesaid are hereby declared

to be for the public use, and the right of eminent domain may be exercised in behalf thereof."

38 An Act of the Legislature of the State of Utah, approved March 11, 1897, entitled "An Act in relation to Water Rights and Irrigation and making Provisions regulating the same," contained the following:

"Any person or corporation shall have the right of way across and upon public, private, and corporate lands, or other right of way, for the construction, maintenance, repair and use of all necessary reservoirs, dams, water-gates, canals, ditches, flumes, tunnels, or other means of securing, storing and conveying water for irrigation, or for any necessary public use, or for drainage, upon payment of just compensation therefor, but such right of way shall in all cases be exercised in a manner not to unnecessarily impair the practical use of any other right of way, highway, or public or private road, nor to unnecessarily injure any public or private property. Such right may be acquired in the manner provided by law for the taking of private property for public use."

6. It has always been the custom of the inhabitants of said Territory and State to apppropriate and use the waters of the rivers and streams therein for mining, agricultural, manufacturing and other purposes through the construction of reservoirs, dams, canals, ditches, flumes, or other means of diverting and conveying the water from such rivers and streams to the point of beneficial use. Such appropriation and use of water has been necessary in the settlement and development of said Territory and State. Originally all of the land in said Territory and State was, and about 90% thereof still is, public land of the United States. It has always been the custom of the inhabitants of said Territory and State to construct reservoirs, canals and other water conduits upon such public land without applying for or obtaining any permit from the United States, or paying any compensation therefor. It has always been recognized by the local customs, laws and decisions of the courts of said Terri-

39 tory and State that any beneficial use of water was a public use, that any person or corporation, who first appropriated the water of any river or stream and applied the same to some beneficial use, acquired a vested right to the water so appropriated (such right being measured by the extent of the beneficial use), and to any reservoir, canal or other water conduit, constructed and used for such purpose, that for reservoirs, canals and other water conduits, rights of way could be acquired upon and over the public land of the United States by construction and use, without any permit or the payment of any compensation, and that any person or corporation, who acquired a vested right to the use of water, might thereafter change the point of diversion and the point and purpose of beneficial use. By Acts of Congress, approved July 26, 1866, and July 9, 1870, and by Sections 2339 and 2340 of the Revised Statutes, the United States formally recognized the existence and validity of such local customs, laws and decisions of courts, and declared that the possessors and owners of such vested rights and of such rights of way should be maintained and protected in the same.

7. On or about July 8, 1901, the Secretary of the Interior made and promulgated regulations concerning right of way over public lands and reservations, under the Act of Congress, approved February 15, 1901, entitled "An act relating to rights of way through certain parks, reservations, and other public lands," the Act of Congress, approved January 21, 1895, entitled "An act to permit the use of the right of way through the public lands for tramroads, canals, and reservoirs, and for other purposes," and Section 1 of the Act of Congress, approved May 11, 1898, entitled "An act to
40 amend an act to permit the use of the right of way through the public lands for tramroads, canals, and reservoirs, and for other purposes," which, after quoting said Act approved February 15, 1901, contained the following:

"1. This act, in general terms, authorizes the Secretary of the Interior, under regulations to be fixed by him, to grant permission to use rights of way through the public lands, forest and other reservations of the United States, and the Yosemite, Sequoia, and General Grant national parks in California, for every purpose contemplated by acts of January 21, 1895 (28 Stat., 635), May 14, 1896 29 Stat., 120), and section 1 of the act of May 11, 1898 (30 Stat., 404), and for other purposes additional thereto, except for tramroads, the provisions relating to tramroads, contained in the act of 1895, and in section 1 of the act of 1898 aforesaid, remaining unmodified and not being in any manner extended.

Although this act does not expressly repeal any provision of law relating to the granting of permission to use rights of way, contained in the acts referred to, yet, considering the general scope and purpose of the act, and Congress having, with the exception above noted, embodied therein the main features of the former acts relative to the granting of a mere permission or license for such use, it is evident that, for purposes of administration, the later act should control in so far as the same pertains to the granting of permission to use rights of way for purposes therein specified. Accordingly all applications for permission to use rights of way for the purposes specified in this act must be submitted thereunder. Where, however, it is sought to acquire a right of way for the main purpose of irrigation and for public or other purposes as subsidiary thereto, as contemplated by Sections 18 to 21 of the act of March 3, 1891 (26 Stat., 1095), and section 2 of the act of May 11, 1898, supra, the application must be submitted in accordance with the then existing regulations issued under said acts. (For present regulations, see 30 L. D., 325).

2. It is be specially noted that this act does not make a grant in the nature of an easement, but authorizes a mere permission in the nature of a license, revocable at any time, and it gives no right whatever to take from the public lands, reservations, or parks, adiacent to the right of way, any material, earth, or stone for construction or other purpose.

3. Application for permission to use the desired right of
41 way through the public lands, reservations, and parks designated in the act must be filed and permission granted, as

herein provided, before any rights can be claimed thereunder. Such application should be made in the form of a map and field notes, in duplicate, of the center line of the right of way or of the pipe, telegraph, telephone, or electrical line, canal, conduit, or reservoir, and must be filed in the local land office for the district in which the land traversed by the right of way is situate; if in more than one district, duplicate maps and field notes need be filed in only one district and single sets in the others. The maps, field notes, evidence of water rights, etc., and, when the applicant is a corporation, the articles of incorporation and proofs of organization, must be prepared and filed in accordance with the then existing regulations, under the general right-of-way acts (for present regulations under said acts see 27 L. D., 663, and 30 L. D., 325), appropriate changes being made in the prescribed forms so as to specify and relate to the act under which the application is made. Permission may be given under this act for rights of way upon unsurveyed lands, maps to be prepared in accordance with the requirements of the circulars noted."

* * * * * * *

"11. Upon receipt of applications for right of way by the General Land Office, the same will be examined and then submitted to the Secretary of the Interior with recommendation as to their approval. Permission to use rights of way through a reservation or any park designated in the act will only be granted upon approval of the chief officer of the Department under whose supervision such park or reservation falls and upon a finding by him that the same is not incompatible with the public interest. If the application, and the showing made in support thereof, is satisfactory, the Secretary of the Interior will give the required permission in such form as may be deemed proper, according to the features of each case; and it is to be expressly understood, in accordance with the final proviso of the act, that any permission given thereunder may be modified or revoked by the Secretary or his successor, in his discretion, at any time, and shall not be held to confer any right, easement, or interest in, to, or over any public land, reservation, or park. The final disposal by the United States of any tract traversed by the permitted right of way is of itself, without further act on the part of the Department, a revocation of the permission so far as it affects that tract, and any permission granted hereunder is also subject to such further and future regulations as may be adopted by the Department.

42 12. When permission to use the right of way applied for is given by the Secretary of the Interior, a copy of the original map will be sent to the local officers, who will mark upon the township plats the line of the right of way and will note in pencil, opposite each tract of public land affected, that such permission has been given, the date thereof, and a reference to the act."

8. On or about June 26, 1902, the Secretary of the Interior made and promulgated regulations concerning right of way for canals, ditches and reservoirs, under the Act of Congress, approved March 3, 1891, entitled "An act to repeal timber-culture laws, and for other

purposes," and Section 2 of said Act of Congress approved May 11, 1898, which, after referring to said Acts, contained the following:

"1. These acts are evidently designed to encourage the much-needed work of constructing ditches, canals, and reservoirs in the arid portion of the country by granting right of way over the public lands necessary to the maintenance and use of the same. The eighteenth section of the act of 1891 provides that—

'The privilege herein granted shall not be construed to interfere with the control of water for irrigation and other purposes under authority of the respective States or Territories.'

The control of the flow and use of the water is therefore, so far as this act is concerned, a matter exclusively under State or Territorial control, the matter of administration within the jurisdiction of this Department being limited to the approval of maps carrying the right of way over the public lands. In submitting maps for approval under this act, however, which in any wise appropriate natural sources of water supply, such as the damming of rivers or the appropriation of lakes, such maps should be accompanied by proof that the plans and purposes of the projectors have been regularly submitted and approved in accordance with the local laws or customs governing the use of water in the State or Territory in which the same is located. No general rule can be adopted in regard to this matter. Each case must rest upon the showing filed in support thereof.

2. The act is not in the nature of a grant of lands; but it is a base or qualified fee, giving the possession and right of use of the land for the purposes contemplated by the law, a reversionary interest remaining in the United States, to be conveyed by it to the
43 person to whom the land may be patented, whose rights will be subject to those of the grantee of the right of way. All persons settling on a tract of public land, to part of which right of way has attached for a canal, ditch, or reservoir, take the same subject to such right of way, and at the full area of the subdivision entered, there being no authority to make deduction in such cases. If a settler has a valid claim to land existing at the date of the filing of the map of definite location, his right is superior, and he is entitled to such reasonable measure of damages for right of way as may be determined upon by agreement or in the courts, the question being one that does not fall within the jurisdiction of this Department. By section 21 of the act above quoted it will be seen that the approval of a map of a canal, ditch, or reservoir does not necessarily carry with it a right to the use of land 50 feet on each side, the approval of the Department granting only such right of way as the law provides. The width necessary for construction, maintenance, and care of a canal, ditch, or reservoir is not determined."

9. On or about September 28, 1905, the Secretary of the Interior made and promulgated regulations concerning right of way for canals, ditches and reservoirs, under said Acts of Congress approved March 3, 1891, and May 11, 1898, which contained the paragraphs hereinabove quoted from the regulations of June 26, 1902.

10. In 1892, 1893, 1894, 1895, 1898, 1899, 1903, and 1904, the

Secretary of the Interior, acting in the regular course of his business and within the scope of his authority as an officer and representative of the United States, made rulings or decisions to the effect that Sections 2339 and 2340 of the Revised Statutes had not been repealed or modified by subsequent Acts of Congress, and that rights of way over the public land of the United States for reservoirs, canals and other water conduits could be acquired for mining, agricultural, manufacturing or other purposes by construction and use under the local customs, laws and decisions of courts, without the filing of certificates or approval of maps or any permit from the Secretary
44 of the Interior.

11. Between March 3, 1891, and February 15, 1901, and between February 15, 1901, and 1905, and subsequently, many reservoirs, canals and other water conduits were constructed upon the public lands and reservations, with the knowledge of the United States, by canal or ditch companies formed for the purpose of irrigation, and by other corporations, individuals and associations of individuals for the purpose of irrigation, for purposes of a public nature, for purposes of water transportation, for domestic purposes, and for the development of power, without the filing of certificates or maps or other compliance with said Act of Congress approved March 3, 1891, or Section 2 of said Act of Congress approved May 11, 1898.

Between January 21, 1895, and February 15, 1901, and also between February 15, 1901, and 1906, and subsequently, many reservoirs, canals, and other water conduits were constructed upon the public lands, forest and other reservations, with the knowledge of the United States, by citizens, associations and corporations of the United States, and by other persons and corporations, for the purpose of, and which have been used to promote, irrigation, mining, quarrying, the manufacture and cutting of timber and lumber, the supplying of water for domestic, public or any other beneficial use, and also the generation or manufacture of electric power, without permits issued by the Secretary of the Interior or other compliance with said Act of Congress approved January 21, 1895, or said Act of Congress approved May 14, 1896, or Section 1 of said Act of Congress approved May 11, 1898, or said Act of Congress approved February 15, 1901.

Many of the canals and water conduits herein mentioned, including many of those constructed for the purpose of gener-
45 ating or manufacturing electric power, occupied rights of way exceeding twenty-five feet in width, and many of the reservoirs herein mentioned, including many of those constructed for the purpose of generating or manufacturing electric power, occupied more than forty acres of ground.

12. No officer or representative of the United States has, until some time in 1909, objected to or protested against the construction or use of the reservoirs, canals or other water conduits herein mentioned, upon the public lands or reservations, or demanded any compensation therefor, or made the claim that Sections 2339 and 2340 of the Revised Statutes had been repealed or modified, or that rights of way for such reservoirs, canals or conduits could not be acquired

upon and over the public lands and reservations by construction and use under the local customs, laws and decisions of courts. Between 1891 and 1909 it was the settled practice of the various departments of the United States Government to allow, and the United States did in fact allow, without protest or objection, the construction and use of reservoirs, canals and other water conduits upon and over its public lands for mining, agricultural, manufacturing and other purposes without the filing of certificates or maps, and without permits issued by the Secretary of the Interior or the Secretary of Agriculture, and without the payment of compensation. It has never been the practice of the Land Department of the United States in conveying title to public land to make any deduction in price or acreage on account of any rights of way for reservoirs, canals, or other water conduits, whether constructed or merely authorized by approval of maps or permission of Secretary of the Interior. It has always been since March, 1872, and still is, the settled practice of the Land Department to insert in patents conveying title to the public land a provision that such title is "subject to any vested and accrued
46 water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws and decisions of courts." The interpretation of the Acts of Congress, approved March 3, 1891, January 31, 1895, May 14, 1896, May 11, 1898, and February 15, 1901, which was adopted and followed by the various departments of the United States Government, between 1891 and 1909, was that said Acts did not repeal, supersede or modify Sections 2339 and 2340 of the Revised Statutes, or the local customs, laws or decisions of courts relating to the appropriation of water and rights of way for reservoirs, canals and other water conduits upon and over the public lands.

Between 1891 and 1906 many millions of dollars of capital have been invested in such reservoirs, canals and other water conduits in reliance upon said regulations, rulings and decisions of the Secretary of the Interior, said settled practice of the Departments of the United States Government and their interpretation of said Acts of Congress, and the failure of the United States to object to or protest against the construction or use of similar reservoirs, canals and conduits, and with the honest belief that rights of way therefor could be acquired upon and over the public lands by construction and use under the local customs, laws and decisions of courts.

13. The hydro-electric power works referred to in the bill of complaint were completed and the waters of Battle Creek and Grove Creek were diverted and applied to the use of generating electric current before December 1, 1906. The said works, including the pipe lines or conduits, the reservoir, the telephone line, tramway and buildings were constructed with the knowledge of the United
47 States, and at very great expense. In such construction, and the construction of other works, the operation of which is dependent upon said hydro-electric power works, the defendant and its predecessors have invested several millions of dollars of capital in reliance upon the regulations, rulings and decisions of the Secretary

of the Interior, the settled practice of the various departments of the United States Government, and their interpretation of the Acts of Congress hereinbefore mentioned, and the failure of the United States to protest against or object to the construction or use of similar work previously constructed upon the public lands and used for similar purposes, and with the honest belief that rights of way for said works of the defendant could be acquired upon and over the public lands by construction and use under the local customs, laws and decisions of courts. No officer or representative of the United States, has until some time in 1912, objected to or protested against the construction or use of said works of the defendant or its predecessors or demanded any compensation therefor. By reason of the matters and things herein alleged, the United States is estopped to question the rights of the defendant or to prevent the maintenance or operation of said works.

14. The pipe lines or conduits, reservoir, telephone line, tramway and buildings, referred to in the bill of complaint, and the rights of way therefor upon the public lands of the United States have, since December 1, 1906, been used for a public purpose; that is to say, for the purpose of storing and conveying water for the generation of electric energy which has been sold and offered for sale to the public for purposes of light, heat and power, including the pumping of water for the purpose of irrigation. The water which has been stored and conveyed by means of said reservoir and pipe lines or conduits has, since December 1, 1906, been used for the purpose of propelling machinery upon land belonging to the
48 defendant and its predecessors, and has always been applied to a beneficial use.

15. The land of the United States, upon which the said reservoir, pipe lines or conduits, telephone line, tramway and buildings are situated is barren, rocky or mountainous, and of no value for mining or agricultural purposes. The said land has not now and never has had any market value. The construction, maintenance and operation of said reservoir, pipe lines or conduits, telephone line, tramway and buildings have not lessened the value of or in any way damaged the said land or caused any injury or damage to the United States, but, on the contrary, have contribtued largely to the development of the industries and resources of the State of Utah, and the settlement, cultivation and sale of the public lands of the United States, and have increased the value of such lands and have benefitted, directly and indirectly, the United States and its citizens.

16. At the time of the construction of said reservoir, pipe lines or conduits, telephone line, tramway and buildings there was no regulation, ruling or decision of the Secretary of the Interior with respect to the location or method of construction or operation thereof upon the public lands of the United States, or which provided for the payment of compensation or any other charge for rights of way over such land. In the construction thereof, the Telluride Power Company complied with all existing regulations, rulings, and decisions of the Secretary of the Interior and also the local customs, laws and decisions of the courts of the State of Utah.

17. The Telluride Power Company acquired, by virtue of the construction and use of the reservoir and pipe lines or conduits referred to in the bill of complaint and the appropriation of the waters of Grove Creek and Battle Creek to a beneficial use, vested and
49 accrued rights to the use of such water and rights of way for such reservoir and pipe lines or conduits upon and over the public lands of the United States, for the purpose of operating said hydro-electric power works and the said rights have been recognized and acknowledged by the local customs, laws and decisions of the courts of the State of Utah.

18. The telephone line, tramway and buildings referred to in the bill of complaint are essential parts of the hydro-electric power works of the defendant, and are used in connection with and are necessary for, the maintenance, operation and repair of the reservoir and the pipe lines or conduits. The two-room, one-story, frame house referred to in the bill of complaint is situated on or close to the bank of said reservoir, and is used for the protection in all kinds of weather of a watchman whose services at or near that point are constantly necessary. The telephone line is used as a means of communication between said two-room, one story frame house and the power house of the defendant. In the use and operation of said reservoir and pipe lines or conduits, it is necessary for the defendant to constantly watch and regulate the flow of the water, and in the maintenance and repair of the same, it is necessary for the defendant to keep men at work at various points upon and along said reservoir and pipe lines or conduits. Some prompt and convenient means of communication between the reservoir and the power house of the defendant is essential. The tramway extends from the power house about 3,000 feet up and along the pressure pipe line where the slope of the ground is very steep. It is used for the transportation of workmen, materials and supplies from the power house to the reservoir, and various points upon the pipe lines or conduits. Some quick and convenient means of transportation is necessary in connection with the operation, maintenance and repair of said reservoir and pipe line or conduits.

50 19. On September 15, 1905, Lucien L. Nunn, acting for and in the interest of the Telluride Power Company, made written application to the State Engineer of Utah for the right to use 15 cubic feet of water per second from the Utah Lake System, to be used for power purposes, which application was received at the State Engineer's Office on September 20, 1905, and was duly approved by the State Engineer on March 14th, 1907, on condition that actual construction work should be begun within six months and should be completed within one and one-half years from the date of the approval. The said work was begun within six months and completed within one and one-half years from said date, and due proof of the completion of work was filed with the State Engineer. On November 5th, 1910, the State Engineer issued to the said Lucien L. Nunn, a certificate of appropriation bearing date of appropriation September 20th, 1905, and the priority num-

ber 74-B, for 15 cubic feet of water per second to be diverted from Battle Creek and Grove Creek, to be used for power purposes from January 1st to December 31st, inclusive, of each year. The said Nunn duly assigned to the Telluride Power Company all his rights and interests with respect to said appropriation and certificate. Under the laws of the State of Utah, the defendant is duly vested with the right to appropriate and use the water of Battle Creek and Grove Creek, as the same have been and are diverted and used by means of the hydro-electric power works referred to in the bill of complaint.

51 20. At various times after 1908 the Secretary of Agriculture has made and issued regulations respecting the use of the National Forests, in and by which he has attempted to regulate, control and determine the rights of various persons and corporations who had constructed or might thereafter construct electric power plants upon land of the United States reserved as National Forests. Said regulations have provided and do provide, in substance, that no reservoir, pipe line or conduits, for any such power plant could be constructed, maintained or operated without the permission of the Secretary of Agriculture given in the form of a Special Use Agreement, nontransferable and revocable at any time by the Secretary of Agriculture. Said regulations have provided and do provide for the payment by the permittee of an annual charge or tax based upon the amount of horse power developed or the number of kilowatt hours of electric energy generated by such power plant, regardless of the value of the land used or occupied by such plant, and regardless of what portion or how much of the plant is located in the National Forests. The said form of Special Use Agreement provides that the permittee must comply with all present and future regulations of the Secretary of Agriculture.

21. The said regulations of the Secretary of Agriculture are unreasonable and unlawful, not necessary for the protection of any interest of the United States, and not authorized by the United States through Act of Congress or otherwise. The Secretary of Agriculture has not now and never has had the power to compel the defendant or any of its predecessors to pay any tax or charge for the construction, maintenance or operation of the hydro-

52 electric power works referred to in the bill of complaint, or any part thereof, or for the use of the land of the United States on which the same are situated. The Secretary of Agriculture has not now and has never had the power to revoke, regulate or in any way interfere with the rights of the defendant with respect to the use of the waters of Battle Creek and Grove Creek, or the maintenance or operation of said hydro-electric power works, or to regulate or control the defendant in the maintenance or operation thereof.

22. The defendant is a public service corporation, duly authorized to carry on the business of generating, distributing and selling electricity in the States of Utah and Idaho, subject to the laws and regulations of such states. It owns and operates an extensive sys-

tem for generating and distributing electricity, consisting of a number of power plants and about 1,487 miles of transmission and distributing lines. Some of said power plants are operated by water and others by steam power. They have a combined capacity of 135,250 horse power and an annual output of more than 200,000,000 kilowatt hours. The said system connects with 72 cities and towns, which have a combined population of 193,190 people. The hydro-electric power works referred to in the bill of complaint are an indispensable part of said system. The continued operation thereof is necessary for the maintenance by the defendant of uninterrupted service to its customers.

Wherefore, the defendant alleges and claims

(*a*) That after the creation of the State of Utah the Congress had no power under the Constitution of the United States
53 to prevent the appropriation of water or the construction upon the public lands of reservoirs, pipe lines or conduits, in accordance with the local customs, laws and decisions of courts;

(*b*) That the Statutes of the Territory and State of Utah, hereinbefore mentioned, were valid and enforceable, and not in conflict with the Constitution of the United States or any power whereby conferred upon Congress;

(*c*) That the Acts of Congress approved March 3, 1891, January 21, 1895, May 14, 1896, May 11, 1898, and February 15, 1901, did not supersede, modify or in any way affect Sections 2339 and 2340 of the Revised Statutes or confer upon the Secretary of the Interior any power to prevent the appropriation of water or the construction upon the public lands of reservoirs, pipe lines or conduits, in accordance with the local customs, laws and decisions of courts;

(*d*) That, if any of the Acts of Congress herein mentioned, or any other Act of Congress, were interpreted to prevent, without a permit from the Secretary of the Interior, the construction or maintenance of the reservoir, pipe lines or conduits referred to in the bill of complaint, such Act of Congress would be unauthorized by and in conflict with Section 3 of Article IV, and the Fifth and Tenth amendments of the Constitution of the United States, and void;

(*e*) That the Congress has no power to compel and has not conferred or intended to confer upon the Secretary of Agriculture the power to compel the defendant to comply with the regulations of the Secretary of Agriculture, or to prevent or interfere with the maintenance, operation or use of the reservoir, pipe lines or conduit-or hydro-electric power works of the defendant referred to in the bill of complaint;

54 (*f*) That, if any Act of Congress were interpreted to confer upon the Secretary of Agriculture the power to make the regulations herein mentioned, or to compel the defendant to comply with such regulations, or to prevent or interfere with the maintenance, operation or use of the reservoir, pipe lines or conduits, or the hydro-electric power works of the defendant, such act of Congress would be unauthorized by and in conflict with the Constitution of the United States, and void.

And prays to be hence dismissed with its costs.

(Signed) E. M. ALLISON, JR.,
(Signed) S. A. BAILEY,
Solicitors for Defendant.

SIMPSON, THACHER & BARTLETT,
Of Counsel, 62 Cedar Street, New York, N. Y.

Filed January 4, 1915. Jerrold R. Letcher, Clerk.

55 That afterwards and on the 15th day of February, 1915, the plaintiff herein filed its Motion to strike answer and for a decree, which being entitled in said court and cause is in words and figures following, to-wit:

Motion to Strike Answer and for a Decree.

To the Honorable the Judge of the District Court of the United States for the District of Utah:

Comes now the above named plaintiff and moves the Court to strike defendant's answer herein, and for a decree against the defendant, the Utah Power & Light Company, and shows to the Court the following grounds therefor:

I.

That the answer of the defendant filed herein does not state facts sufficient to constitute a defense.

II.

That the said answer and each separate defense stated therein are insufficient in law to constitute any defense against the cause of action set forth in plaintiff's bill of complaint.

WILLIAM W. RAY,
United States Attorney.
D. S. COOK,
Assistant United States Attorney.

J. F. LAWSON,
Of Counsel.

Service of the foregoing motion is acknowledged this 15th day of February, 1915.

E. M. ALLISON, JR.,
S. A. BAILEY,
Attorneys for Defendant.

Filed February 15, 1915. Jerrold R. Letcher, Clerk.

56 And afterwards and on the 4th day of March, 1915, a decree was entered herein, which being entitled in said court and cause, is in words and figures following, to wit:—

Decree.

This cause came on to be heard at this term upon the bill filed by plaintiff, the answer filed by the defendant, Utah Power & Light Company, a corporation, and plaintiff's motion to strike defendant's answer, and for a decree. The same was argued by counsel and said motion being sustained, upon consideration thereof, it was ordered, adjudged and decreed as follows:

That the defendant, Utah Power & Light Company, a corporation, its officers, agents, servants, employees, successors and assigns are hereby enjoined and restrained from maintaining and operating its reservoir, wood and steel pressure pipe lines or conduits, telephone lines, transmission line, tramway, and buildings consisting of one frame house, one wood shed, and two tents, as now located upon the following described lands, the property of the United States, to-wit:—

The north-west quarter (¼) of the north-west quarter (¼) of Section twenty-three (23), the south half (½) of the south half (½) of Section fourteen (14), and the west half (½) of Section fourteen (14), the south-west quarter (¼) of the south-west quarter (¼) of Section thirteen (13), the north-west quarter (¼) of Section twenty-four (24), the south-east quarter (¼) of the south-west quarter (¼) of Section eleven (11), the north-west quarter (¼) of Section twenty-three (23), and the south-east quarter (¼) of the north-east quarter (¼), and the south-east quarter (¼) of Section twenty-two (22), all in Township five (5) south, Range two (2) East, Salt Lake Base and Meridian, in Utah County, State of Utah; all as particularly set forth in plaintiff's bill of com-
57 plaint on file herein, and the exhibits thereto attached.

That plaintiff be and is hereby decreed and adjudged to be the true and lawful owner of the lands hereinabove described, and every part and parcel thereof, and its title thereto is adjudged and decreed to be quieted and confirmed as against all claims, demands and contentions whatsoever of the defendant.

That the defendant, Utah Power & Light Company, pay to the plaintiff its costs herein incurred, taxed at $32.20 and that complainant have execution therefor.

That the injunction herein ordered shall take effect from and after ninety (90) days from the date of entry of this Decree.

Dated this 4th day of March, A. D. 1915.

J. A. MARSHALL, *Judge.*

Filed March 4, 1915. Jerrold R. Letcher, Clerk.

58 And afterwards and on the 9th day of April, 1915, the following Exceptions by the plaintiff herein, were made to the refusal of the Court to allow an accounting, which being entitled in said court and cause is in words and figures following, to-wit:

Exceptions to Refusal of Court to Allow an Accounting.

At this day comes W. W. Ray, United States District Attorney, and on his motion, it is Ordered that the exceptions of the complainant to the refusal of the Court to decree an accounting and damages as prayed for in the bill of complaint be entered.

(Signed) J. A. MARSHALL, *Judge.*

Dated April 9, 1915.

59 That afterwards and on the 7th day of June, 1915, the defendant herein filed its Petition for Appeal to the Supreme Court of the United States, which, being entitled in said Court and cause is in words and figures, following, to-wit:—

Petition for Appeal.

The above named defendant, conceiving itself aggrieved by the final order, judgment and decree entered in said cause on the 4th day of March, 1915, and by interlocutory orders entered in said cause on the 31st day of March, 1913, and on the 20th day of April, 1914, hereby appeals to the Supreme Court of the United States from said orders and decree because of the errors specified in the assignment of errors which is filed herewith, and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said final order, judgment and decree and said interlocutory orders were made, duly authenticated, may be sent to the Supreme Court of the United States; and also prays that an order be made fixing the amount of security which the defendant shall give, and that upon the giving of such security an order be made suspending the injunction and all further proceedings herein pending the determination of such appeal by the Supreme Court of the United States.

UTAH POWER & LIGHT COMPANY,
R. A. WILBUR,
By E. M. ALLISON, JR.,
S. A. BAILEY,
Solicitors.

Filed June 7, 1915. Jerrold R. Letcher, Clerk.

60 And afterwards and on the same day, the defendant and appellant herein filed its Assignment of Errors, which being entitled in said court and cause are in words and figures following, to-wit:—

Assignment of Errors.

Comes now the Utah Power & Light Company, the above named defendant and appellant herein, and files the following assignment of errors, upon which it will rely in the prosecution of its appeal in the above entitled cause:

1. The Court erred in holding and deciding that the bill of complaint herein states facts sufficient to constitute a cause of action.

2. The Court erred in making herein the order dated March 31, 1913, in so far as it overruled the defendant's motion to dismiss the bill of complaint, except with respect to "conduits", "reservoir", and "steel pressure pipe" in Paragraph Three of the bill, and also with respect to those parts of Paragraph Four of the bill specified in said motion as (*a*), (*b*), (*f*), (*k*), (*l*), (*m*) and (*n*) in relation to that paragraph, as to which parts the Court sustained the defendant's motion.

3. The Court erred in sustaining the plaintiff's motion for leave to amend its bill of complaint by reinstating therein the following portions of said bill stricken therefrom by the order of this Court entered hereon on March 31, 1913, to-wit:—"conduits", "reservoir" and "steel pressure pipe" in Paragraph Three of said bill; also those parts of said Paragraph Four of said bill specified in plaintiff's said motion as (*a*), (*b*) and (*f*).

61 4. The Court erred in making herein the order dated April 20, 1914.

5. The Court erred in holding and deciding that the amended answer of the defendant herein does not state facts sufficient to constitute a defense.

6. The Court erred in holding and deciding that the amended answer of the defendant herein is insufficient in law to constitute a defense against the cause of action, if any, set forth in the plaintiff's bill of complaint.

7. The Court erred in sustaining the motion of the plaintiff to strike the amended answer of the defendant herein.

8. The Court erred in sustaining the motion of the plaintiff for a decree against the defendant herein.

9. The Court erred in entering herein the decree against the defendant dated the 4th day of March, 1915.

For the above errors so assigned, the said defendant and appellant prays that the judgment and decree entered in said cause against the defendant be reversed.

R. A. WILBUR,
E. M. ALLISON, JR.,
S. A. BAILEY,
Solicitors for Appellant.

Filed June 7, 1915. Jerrold R. Letcher, Clerk.

62 That afterwards and on the same day an order was duly entered herein allowing appeal and fixing supersedeas bond, which being entitled in said court and cause is in words and figures following, to-wit:—

Order Allowing Appeal and Fixing Supersedeas Bond.

On this 7th day of June, 1915, came the Utah Power & Light Company, defendant in the above entitled cause, and presented to the court its petition for an appeal to the Supreme Court of the United

States, and an assignment of errors accompanying the same, praying also that an order be made suspending the injunction and all further proceedings herein pending the determination of such appeal by the Supreme Court of the United States.

In consideration whereof the court does allow the appeal prayed for and orders that the injunction and all further proceedings herein be suspended upon the defendant giving bond according to law in the sum of Five Hundred Dollars, which shall operate as a supersedeas bond.

J. A. MARSHALL, *Judge.*

Filed June 7, 1915. Jerrold R. Letcher, Clerk.

63 That afterwards and on the same day the defendant and appellant herein filed its Bond on Appeal, which being entitled in said court and cause is in words and figures following, to-wit:

Bond on Appeal.

Know all men by these presents, that the Utah Power & Light Company, a corporation organized under the laws of the State of Maine and having its principal office at Salt Lake City, in the State of Utah, as principal, and William S. McCornick of Salt Lake City, as surety, are held and firmly bound unto the United States of America in the sum of Five Hundred Dollars ($500.00), to be paid to the United States of America, to the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 31st day of May, 1915.

Whereas, the above named Utah Power & Light Company has prosecuted an appeal to the Supreme Court of the United States to reverse the decree for an injunction granted in the District Court of the United States in and for the District of Utah in the above entitled suit on the 4th day of March, 1915;

Now therefore, the condition of the above obligation is such that, if the said Utah Power & Light Company shall prosecute its said appeal to effect, and answer all damages and costs if it fail to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

64 Sealed and delivered this 31st day of May, 1915.

UTAH POWER & LIGHT COMPANY,
By S. A. BAILEY, *Attorney.*
W. S. McCORNICK, *Surety.*

Signed and executed in *in* the presence of
E. B. CRITCHLOW.

Approved:
J. A. MARSHALL.

Filed June 7, 1915. Jerrold R. Letcher, Clerk.

65 That afterwards and on the 7th day of June, 1915, the defendant and appellant herein filed its Præcipe for Transcript on Appeal, which being entitled in said court and cause is in words and figures following, to-wit:

Præcipe for Transcript on Appeal.

The Clerk of the United States District Court for the District of Utah will prepare and forward to the Supreme Court of the United States at Washington, D. C., a typewritten transcript of the record and proceedings in the above entitled cause, and include therein the following:

1. Bill of complaint.
2. Supplemental bill of complaint.
3. Order of substitution of party defendant.
4. Defendant's motion to dismiss bill of complaint and specified parts thereof.
5. Order of March 31, 1913, denying in part the said motion.
6. Opinion of the Court thereon.
7. Complainant's motion for leave to am'd bill by reinstating part of allegations stricken from bill by order of March 31, 1913.
8. Order granting same.
9. Amended answer.
10. Motion to strike answer and for a decree.
11. Decree.
12. Petition for appeal.
13. Assignment of errors.
14. Order allowing appeal and fixing supersedeas bond.
15. Bond on appeal.
16. Præcipe for transcript.
17. Certificate of Clerk.
18. Citation.

R. A. WILBUR,
E. M. ALLISON, JR.,
S. A. BAILEY, *Solicitors.*

66 Service of copy accepted this 7th day of June, 1915.

WILLIAM W. RAY,
United States Attorney.

Filed June 7, 1915. Jerrold R. Letcher, Clerk.

67 *Cross-Appeal by Plaintiff.*

68 And afterwards and on the 8th day of June, 1915, the plaintiff and appellee herein filed its Petition for Cross Appeal and Order allowing same, which being entitled in said court and cause are in words and figures following, to-wit:

Petition for Cross-Appeal and Order Allowing Same.

69 The above named plaintiff, the United States of America, conceiving itself aggrieved by the final order, judgment and decree entered in said cause on the 4th day of March, 1915, hereby appeals to the Supreme Court of the United States from said order and decree for the reasons specified in the assignments of errors filed herewith, and prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which the final order, judgment and decree were made, duly authenticated, may be sent to the Supreme Court of the United States.

WILLIAM W. RAY,
United States Attorney,
Solicitor for Plaintiff and Cross-Appellant.

J. F. LAWSON,
Of Counsel.

And now, to-wit, on the 8th day of June, 1915, it is ordered that the foregoing claim for appeal be allowed.

J. A. MARSHALL,
District Judge.

Filed June 8, 1915. Jerrold R. Letcher, Clerk.

70 And afterwards and on the same day the plaintiff and cross appellant filed its Assignments of Error herein, which being entitled in said court and cause are in words and figures following, to-wit:

Assignments of Error.

71 Comes now the above named plaintiff, the United States of America, by William W. Ray, United States Attorney for the District of Utah, and makes and files this its assignments of error:

1. That the Court erred in refusing to decree that defendant account and make corresponding pecuniary payment to the plaintiff for the value of the use of the lands of the plaintiff by the defendant to be measured by the duration of such enjoyment, the net power capacity of the power plant of the defendant, and the scale of charges adopted in the regulations of the Secretary of Agriculture governing similar cases during the period of said use, as set forth in plaintiff's bill of complaint herein.
2. That the trial court erred in refusing to decree that defendant pay to plaintiff the reasonable value of the use of the lands of plaintiff, as set forth and prayed for in its bill of complaint.

Wherefore Plaintiff prays that said decree be modified and amended and that said District Court be directed to enter a decree

herein, in accordance with the prayer of plaintiff's bill of complaint, and as may be in conformity with the rules of equity.

WILLIAM W. RAY,
United States Attorney;
J. F. LAWSON,
Solicitors for Plaintiff.

Filed June 8, 1915. Jerrold R. Letcher, Clerk.

72 And afterwards and on the same day the plaintiff and cross appellant filed its Præcipe for Transcript on Cross Appeal, which being entitled in said court and cause is in words and figures, following, to wit:

Præcipe for Transcript on Cross-Appeal.

73 The Clerk of the United States District Court for the District of Utah will prepare and forward to the Supreme Court of the United States at Washington, D. C., a typewritten transcript of the record and proceedings in the above entitled cause, and include therein the following:

1. Bill of Complaint.
2. Supplemental bill of complaint.
3. Order of substitution of party defendant.
4. Defendant's motion to dismiss bill of complaint and specified parts thereof.
5. Order of March 31, 1913, denying in part the said motion.
6. Opinion of the Court thereon.
7. Complainant's motion for leave to amend bill by reinstating part of allegations stricken from bill by order of March 31, 1913.
8. Order granting same.
9. Amended Answer.
10. Motion to strike answer and for a decree.
11. Decree.
12. Exceptions to refusal of Court to allow an accounting.
13. Petition for Cross Appeal and order granting same.
14. Assignment of errors on Cross Appeal.
15. Præcipe for transcript on Cross Appeal.
16. Certificate of Clerk.

74 17. Citation on Cross Appeal.

WILLIAM W. RAY,
United States Attorney,
Solicitor for Plaintiff and Cross-Appellant.

J. F. LAWSON,
Of Counsel.

Service of copy accepted this 8th day of June, 1915.

R. A. WILBUR,
E. M. ALLISON, Jr.,
S. A. BAILEY,
Attorneys for Defendant and Appellee.

Filed June 8, 1915. Jerrold R. Letcher, Clerk.

75 UNITED STATES OF AMERICA,
District of Utah, ss:

I, Jerrold R. Letcher, Clerk of the United States District Court, for the District of Utah, do hereby certify that the foregoing pages numbered from One to 78 inclusive, constitute a complete transcript of all the pleadings, proceedings and records now on file in said office in a certain cause heretofore adjudicated in said court, wherein the United States of America, is plaintiff and Utah Power & Light Company, a corporation, substituted for The Telluride Power Company, a corporation, is defendant, as full and true as it purports to contain and made pursuant to the Præcipes filed therein by the respective parties to the appeal and cross appeal.

I further certify that the original Citations are hereto attached and herewith returned with the Transcript of the record in said cause.

In testimony whereof, I have affixed my official signature and the seal of said court at Salt Lake City in said District, this 19th day of June, 1915.

[Seal United States District Court, District of Utah.]

JERROLD R. LETCHER,
Clerk United States District Court,
District of Utah.

[United States internal revenue documentary stamp, series of 1914, ten cents, canceled June 19, 1915. J. R. L.]

76 In the District Court of the United States in and for the District of Utah, Central Division.

No. 390. Equity.

UNITED STATES OF AMERICA, Plaintiff,
v.
UTAH POWER & LIGHT COMPANY, a Corporation, Defendant.

Citation.

To the United States of America and to William W. Ray, United States Attorney, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington, in the District of Columbia, sixty days after the date of this citation, pursuant to an appeal allowed and filed in the Clerk's office of the District Court of the United States for the District of Utah, wherein the Utah Power & Light Company is appellant and the United States of America is appellee, to show cause, if any there be, why the decree rendered against the said appellant as in said appeal mentioned should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 7th day of June, 1915.

J. A. MARSHALL, *Judge.*

77 Service of the within citation is hereby admitted at Salt Lake City, Utah, this 7th day of June, 1915.

WILLIAM W. RAY,
United States Attorney and Solicitor for Appellee.

78 In the District Court of the United States in and for the District of Utah, Central Division.

No. 390. In Equity.

UNITED STATES OF AMERICA, Plaintiff,
vs.
UTAH POWER & LIGHT COMPANY, a Corporation, Defendant.

Cross-Appeal.

Citation.

The United States of America to the Utah Power & Light Company, a Corporation, Defendant, and to R. A. Wilbur, E. M. Allison, Jr., and S. A. Bailey, its Solicitors, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington, in the District of Columbia, sixty days from and after the date of this citation, pursuant to an appeal allowed and filed in the Clerk's office of the District Court of the United States for the District of Utah, wherein the United States of America is appellant and the Utah Power & Light Company is appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 8th day of June, 1915.

J. A. MARSHALL,
District Judge.

Service & copy accepted June 8, 1915.

R. A. WILBUR,
E. M. ALLISON, JR.,
S. A. BAILEY,
Solicitors for Defendant.

Endorsed on cover: File No. 24,855. Utah D. C. U. S. Term No. 572. Utah Power & Light Company, appellant, vs. The United States. File No. 24,856. Term No. 573. The United States, appellant, vs. Utah Power & Light Company. Filed July 26th, 1915. File Nos. 24,855 and 24,856.